IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.21 OF 2004

The Commissioner of Central Excise,
Mumbai V. .. Appellant
V/s
M/s.Kusum Engg.Works .. Respondent

Mrs.Neeta Masurkar with Mr.Kiran Kandpile for the Appellant.

Mr.F.L.Berarwalla, Mr.D.K.Subhedar and Ms.Rohini Dandekar i/by M/s.Berarwalla & Co. for the Respondents.

CORAM: DR.S.RADHAKRISHNAN &
J.H.BHATIA, JJ.

DATE : 10/08/2005.

P.C.:

1. Heard the learned Counsel for the parties. By this Appeal, the Appellant is seeking to raise the following substantial questions of law:-

"(i) Whether on the facts and circumstances of the case, the Tribunal is right in law in rejecting the appeal of the appellants in view of the judgment of Hon'ble Supreme Court in Mafatlal Industries Limited v. U.O.I. - 1997 (89) E.L.T. 247 (S.C.).?"

"(ii) Whether in the facts and circumstances of the case, whether the Sectin 11 B (as amended by Act 31 of 1991) as interpreted by Hon'ble Supreme Court in para 96 of the judgment in case of Mafatlal Industries Ltd. v. U.O.I. - 1997 (89) E.L.T. 247 (S.C.). ?"

"(iii) Whether the order of the Hon'ble Bombay High court dated 13.8.1991 in W.P.Nos.2432/91 and 2436/91 directing department to refund the amount within two weeks was not a final order as on the date of amendment to Section 11B (w.e.f.20.9.91) in the light of Bombay High Court's subsequent orders dtd.13.8.91 on Notice of Motion No.656/91 & 57/92 (decided on 31.1.91 & 20.2.92) and also in the light of its directions on 19.1.98 in Notice of Motion No.244/97 & 245/97 decided on (9.1.98) to the respondent directing him to appear before adjudicating authorities in pursuant to show cause notice issued under amended provisions of Section 11B of Central Excise Act, 1944.?"

2. We have perused the order passed by the CEGAT dated 31.12.2003 wherein the CEGAT has clearly directed to refund the amount as per the order passed by this Court. The learned Counsel for the Appellant fairly admits that till date the Appellant has not challenged the order of this Court in the Supreme Court, and that the Appellant has not even complied with this Court's order. There is no dispute with regard to the transaction involved that it was prior to the amendment of Section 11B. Under these circumstances, we do not find any substantial question of law involved in this Appeal. Appeal is therefore dismissed.

(DR.S.RADHAKRISHNAN J.)

(J.H.BHATIA J.)